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March 4, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2014AP110-NM	In re the termination of parental rights to Marco J., Jr., a person under the age of 18: State of Wisconsin v. Perriona W. (L.C. # 2012TP133)
2014AP111-NM	In re the termination of parental rights to Aerriona O., a person under the age of 18: State of Wisconsin v. Perriona W. (L.C. # 2012TP134)
2014AP112-NM	In re the termination of parental rights to Cleveland D., a person under the age of 18: State of Wisconsin v. Perriona W. (L.C. # 2012TP135)
2014AP113-NM	In re the termination of parental rights to De'Fines W., a person under the age of 18: State of Wisconsin v. Perriona W. (L.C. # 2012TP136)

Before Blanchard, P.J.[1]

Perriona W. appeals orders terminating her parental rights to four children in companion cases. Attorney Patrick Flanagan has filed a no-merit report seeking to withdraw as appellate counsel. *See* ***Anders v. California***, 386 U.S. 738, 744 (1967); WIS. STAT. RULE 809.32; and ***State ex rel. McCoy v. Wisconsin Court of Appeals***, 137 Wis. 2d 90, 403 N.W.2d 449 (1987). The no-merit report addresses the sufficiency of the evidence to support the circuit court's finding of parental unfitness and to support the order terminating Perriona's parental rights. Perriona was sent a copy of the no-merit report, but has not filed a response. Upon reviewing the entire record, as well as the no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues.

Jury Waiver

There is a statutory right to a jury trial in a termination of parental rights case. WIS. STAT. §§ 48.422(4), 48.31(2), 48.424(2); *see also* ***Steven V. v. Kelley H.***, 2004 WI 47, ¶4, 271 Wis. 2d 1, 678 N.W.2d 856. Perriona waived her right to a jury trial in all four cases. Courts are urged to engage in a colloquy to determine that a withdrawal of a jury demand is knowing and voluntary. ***Walworth Cnty. DHHS v. Andrea L. O.***, 2008 WI 46, ¶55, 309 Wis. 2d 161, 749 N.W.2d 168 (2008). The record reflects that the circuit court did engage in a colloquy with Perriona and found that Perriona's waiver was freely, voluntarily, and knowingly made. Perriona has not alleged that her waiver of the right to a jury trial was unknowing or involuntary

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

and, based on the record and the no-merit report, we are unaware of any facts that would indicate otherwise.

Grounds Phase-Continuing CHIPS

The State proceeded to a bench trial with one ground, continuing CHIPs, as a basis for termination of parental rights. We agree with counsel's assessment that a challenge to the sufficiency of the evidence on appeal would be without merit. In order to establish the termination ground of continuing CHIPs, the County needed to show, as to each child: (1) that the child had been adjudged in need of protection and services and placed outside the home for six months or more pursuant to a court order containing statutory notice of TPR proceedings; (2) that the agency responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the court; (3) that Perriona failed to meet the conditions established for the safe return of the child; and (4) there was a substantial likelihood that Perriona would not meet the conditions within the next nine months. *See* WIS. STAT. § 48.415(2).

The State introduced the prior court orders needed to prove the first element as exhibits at the grounds hearing, as to each child. To prove the second element, the State elicited testimony from Nedine Coenen of the Bureau of Milwaukee Child Welfare, a case manager who worked with Perriona from July 2009 through March 2011. Coenen testified that during her time as Perriona's case manager, the Bureau provided Perriona AODA services, urine screens, domestic violence counseling, individual therapy, family therapy, a parenting assistant, and visitation services.

As to the third element, the State elicited the testimony of two psychologists, Dr. Kenneth Sherry and Dr. Stephen Emiley. Dr. Sherry examined Perriona in 2007. He testified that Perriona has an I.Q. within the range of a person with mild mental retardation. He testified that Perriona has limited ability to manage her children and has difficulty recognizing how her actions resulted in her children being removed from her care. Dr. Emiley conducted an evaluation of Perriona in 2011. He also testified as to Perriona's cognitive limitations. Dr. Emiley diagnosed Perriona with personality disorder, not otherwise specified, and opined that she is difficult to treat because of her defensiveness and problems following through with things.

The State also elicited testimony from Michelle Dondlinger, a Bureau of Milwaukee Child Welfare employee who had been assigned as case manager for Perriona. Dondlinger testified that when she visited Perriona's home, there was garbage all over the floor and the condition was "deplorable." Dondlinger also testified that Perriona attended only twenty-two of forty-seven scheduled visits with her. Andrea Brixius, another case manager from the Bureau who was assigned to Perriona's case, testified that, in January 2009, two of Perriona's children reported that they were being left home alone when Perriona would go out for the night. Brixius visited Perriona's home and found the children there alone with no adult supervision.

As to the fourth factor, the State presented the testimony of Jessica Edwards, a case manager at Children's Hospital of Wisconsin Community Services who had worked with Perriona. Edwards testified that Perriona continued to neglect her responsibility to take her son Cleveland, who has cerebral palsy, to medical appointments and to take the other children to the dentist. Edwards further testified that Perriona had not met the court ordered conditions for the

return of the children to her care and that, in her opinion, Perriona would not be able to do so for the next nine months.

Perriona also testified on her own behalf. She admitted that she did not take Cleveland to several medical appointments while he was in her care. Perriona admitted that she used marijuana, missed visits with her children, and failed to attend parenting classes and therapy sessions. She also testified that she failed to follow through with therapy, medical care, and other services recommended for her children.

We conclude that the evidence in the record is sufficient to support the court's finding that all of the required CHIPs elements had been established under WIS. STAT. § 48.415(2), such that an appeal on that basis would be without merit.

Disposition

Any challenge to the circuit court's exercise of discretion in the disposition phase of the proceedings would likewise be without merit. At the dispositional hearing, the court was required to consider such factors, as to each child, as the likelihood of the child's adoption, the age and health of the child, the nature of the child's relationship with the parents or other family members, the wishes of the child and the duration of the child's separation from the parent, with the prevailing factor being the best interests of the child. WIS. STAT. § 48.426(2) and (3). The record shows that the court did so. The court found the likelihood of adoption for three of the children to be "very good." As to the fourth, Aerriona, the court found that, although there was no adoptive resource for her currently, "she is adoptable." The court heard from a case manager at Mercy Options Cooperative Child Institute who testified that she was working with Aerriona

to address her behavior and aggression issues and was trying to find a home for Aerriona. The court considered the children's wishes and, although Marco and Aerriona stated that they wanted to return home, the court noted that their relationships with Perriona were "based on trauma." The court found that, as to Marco, Cleveland, and De'Fines, termination would allow them to enter into more permanent and stable family relationships. The court also found that, for Aerriona, termination would sever the "toxic" relationship she had with her mother, such that termination was in the child's best interest. In short, the record shows that the trial court reasonably applied the proper legal standard to the facts of record when reaching its disposition.

In addition to the potential issues discussed by counsel, we note that it appears from the record that all of the statutory deadlines were met or properly extended for good cause, and that required notices were given. We have discovered no other arguably meritorious grounds for an appeal. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of ***Anders*** and WIS. STAT. RULE 809.32.

IT IS ORDERED that the orders terminating Perriona's parental rights are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Attorney Flanagan is relieved of any further representation of Perriona in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals